

E6
08/09/91

VARNUM, RIDDERING, SCHMIDT & HOWLETT

ATTORNEYS AT LAW

JAMES N. DeBOER, JR.
GORDON B. BOOZER
WILLIAM K. VAN T HOF
HILARY F. SNELL
PETER ARMSTRONG
ROBERT J. ELEVELD
KENT J. VANA
CARL E. VERBEEK
JON F. DEWITT
JOHN C. CARLYLE
DONALD L. JOHNSON
DANIEL C. MOLHOEK
GARY P. SKINNER
THOMAS T. HUFF
TIMOTHY J. CURTIN
H. EDWARD PAUL
JOHN E. MCGARRY
DIRK HOFFIUS
J. TERRY MORAN
BENHAM R. WRIGLEY, JR.
THOMAS J. MULDER
THOMAS J. BARNES
ROBERT D. KULLGREN
RICHARD A. KAY
LARRY J. TITLEY
BRUCE A. BARNHART
FREDRIC A. SYTSMA
JACK D. SAGE
JEFFREY L. SCHAD
THOMAS G. DEMLING
JOHN W. PESTLE
ROBERT P. COOPER
FRANK G. DUNTEN
TERRANCE R. BACON
NYAL D. DEEMS
RICHARD A. HOOKER

RANDALL W. KRAKER
PETER A. SMIT
MARK C. HANISCH
MARILYN A. LANKFER
THOMAS L. LOCKHART
ROBERT L. DIAMOND
BRUCE G. HUDSON
BRUCE GOODMAN
JOSEPH J. VOGAN
ERIC J. SCHNEIDEWIND
THOMAS A. HOFFMAN
TERESA S. DECKER
JEFFREY R. HUGHES
RICHARD W. BUTLER, JR.
LAWRENCE P. BURNS
MATTHEW D. ZIMMERMAN
WILLIAM E. ROHN
JOHN PATRICK WHITE
CHARLES M. DENTON
PAUL M. KARA
JEFFREY D. SMITH
H. LAWRENCE SMITH
THOMAS C. CLINTON
MARK L. COLLINS
JONATHAN W. ANDERSON
CARL OOSTERHOUSE
WILLIAM J. LAWRENCE III
GREGORY M. PALMER
SUSAN M. WYNGAARDEN
KAPLIN S. JONES
STEPHEN P. AFENDOUKIS
ROBERT A. HENDRICKS
DAVID E. KHOREY
MICHAEL G. WOOLDRIDGE
TIMOTHY J. TORNGA
PERRIN RYNDERS

SUITE 800
171 MONROE AVENUE, N.W.
GRAND RAPIDS, MICHIGAN 49503
TELEPHONE (616) 459-4186
FAX (616) 459-8468
TELEX 1561593 VARN

SUITE 700
ONE MICHIGAN AVENUE
120 NORTH WASHINGTON SQUARE
LANSING, MICHIGAN 48933
TELEPHONE (517) 482-6237
FAX (517) 482-6937

350 EAST MICHIGAN AVENUE
KALAMAZOO, MICHIGAN 49007
TELEPHONE (616) 382-2300
FAX (616) 382-2382

321 WASHINGTON STREET
P.O. BOX 288
GRAND HAVEN, MICHIGAN 49417
TELEPHONE (616) 846-7100
FAX (616) 846-7101

MARK S. ALLARD
TIMOTHY E. EAGLE
DAVID A. RHEM
DONALD P. LAWLESS
MICHAEL S. McELWEE
GEORGE B. DAVIS
JACQUELINE D. SCOTT
N. STEVENSON JENNETTE III
MICHAEL A. SHIELDS
DAVID E. PRESTON
JEFFREY W. BESWICK
ELIZABETH J. FOSSEL
JOEL E. BAIR
JOAN SCHLEEF
SCOTT A. HUIZENGA
RICHARD J. MCKENNA
BOYD C. FARNAM
JEFFREY D. NICKEL
MICHAEL F. KELLY
NANCY G. LOCKHART
ADNA H. UNDERHILL, JR.
KATHLEEN P. FOCHTMAN
JEFFREY J. FRASER
LANCE R. JONES
JAMES R. STADLER
RICHARD R. SYMONS
JINYA CHEN
DAWN D. BRACKMANN
MATTHEW V. PIWOWAR
RICHARD T. KNAUER
KELLY W. BHIRDO
JEFFERY S. CRAMPTON
RONALD G. DEWAARD
MAUREN POTTER
SCOTT T. RICKMAN
MICHELLE K. BEHAYLO

ANNMARIE BLACK
VICKI S. YOUNG
BRYAN K. ANDERSON
BRIDGET TUCKER GONDER
MARY C. MEATHE
BEVERLY HOLADAY
RANDALL J. GROENDYK
OF COUNSEL
LAURENT K. VARNUM
JOHN L. WIERENGO, JR.
F. WILLIAM HUTCHINSON
CHESTER C. WOOLDRIDGE
WILLIAM J. HALLIDAY, JR.
EUGENE ALKEMA
R. STUART HOFFIUS
PETER VISSERMAN
WILLIAM H. MERRILL
DAVID L. PORTEOUS
RICHARD L. SPINDLE
1936-1975
CARL J. RIDDERING
1904-1977
CLIFFORD C. CHRISTENSON
1915-1982
ROBERT G. HOWLETT
1906-1988
WALTER K. SCHMIDT
(RETIRED)
*ADMITTED IN
PEOPLE'S REPUBLIC OF CHINA

August 9, 1991

REPLY TO

Grand Rapids

TELECOPY

Beth A. Henning
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Mail Code: 5HS-11
Chicago, Illinois 60604

US EPA RECORDS CENTER REGION 5



468974

Re: U.S. EPA v. Stevick, et al.
(Albion-Sheridan Township Landfill, Calhoun County,
Michigan)

Dear Ms. Henning:

This firm represents the City of Albion as one of the identified potentially responsible parties ("PRPs") under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for the Albion-Sheridan Township Landfill "Superfund" site (the "Site") in Calhoun County, Michigan. This letter is in further response to the U.S. EPA's Special Notice dated June 3, 1991, and to the Agency's request in that Notice for the submission of a "good faith" proposal for implementing and conducting the remedial investigation and feasibility study ("RI/FS") of the Site. For the reasons set forth below and in prior communications, the City of Albion is not at this time in a position to submit, either by itself or in conjunction with other identified PRPs, an offer to conduct the RI/FS.

Initially, and primarily, there does not appear to be any basis under CERCLA for the U.S. EPA's overly broad and vague

VARNUM, RIDDERING, SCHMIDT & HOWLETT

Beth A. Henning, Esq.

August 9, 1991

Page 2

allegations that the City of Albion is somehow a PRP with respect to the Site. The City of Albion denies that it is a current or former owner or operator of the Site located in Sheridan Township, and denies that it is a person who generated hazardous substances disposed of at the Site so as to be potentially liable under Section 107 of CERCLA. The recently received response to our Freedom of Information Act ("FOIA") request for information relative to such allegations does not adequately support a valid CERCLA § 107 cause of action against the City nor provide any basis to conclude that such an action would be well-grounded in fact and warranted under existing law. We request that the U.S. EPA immediately provide any additional information or clarification of the alleged basis for the characterization of the City of Albion as a PRP for this Site which you believe should be considered in assessing the City's participation in the RI/FS.

Furthermore, based on currently available information regarding the history of the Site, the number of PRPs identified and pursued to date by the U.S. EPA is unduly limited. The City of Albion objects to the U.S. EPA's failure to join other "necessary" PRPs, including other area municipalities apparently directly involved with the Site and other local businesses and entities from which industrial wastes allegedly disposed of at the Site are likely to have originated. This failure to include all appropriate PRPs has had a significant negative impact on the efforts of those who have been included thus far in the inordinately small group of PRPs to reach any consensus on a joint "good faith" proposal in these proceedings (although we have engaged in settlement discussions with certain of the other PRPs as referred to in your August 7, 1991 letter). This situation is compounded further by the bankruptcy of Eagle-Picher Industries (f/k/a Union Steel Products) and the resulting non-participation by that PRP in these proceedings. Under these circumstances, the Agency might be well-advised to consider a mixed-funding or mixed work approach for this Site.

We are also concerned that the State of Michigan does not appear to be sufficiently involved in this matter, despite the expressed interest of the Michigan Department of Natural Resources (DNR) in the Site, such that a complete settlement may not now be possible. Please advise us if the MDNR will be participating in the Site response activities, and, if so, on what basis.

In any case, and without regard to the City's alleged responsibility to participate in conducting the RI/FS, the City of Albion is operating under severe financial constraints and cannot in fact make an offer in "good faith" as provided by the U.S. EPA's June 3, 1991 Special Notice. Essentially, the financial resources are simply not available to the City to actually perform the RI/FS

VARNUM, RIDDERING, SCHMIDT & HOWLETT

Beth A. Henning, Esq.
August 9, 1991
Page 3


activities, even if the City was inclined to do so, and it would therefore be disingenuous to propose to do so. We would, however, entertain and be willing to discuss further with the U.S. EPA the possibilities for a de minimis PRP settlement under CERCLA § 122(g).

Although the City of Albion is not currently in a position to submit a "good faith" offer, it remains willing to negotiate a settlement in this matter, both with other PRPs and with the U.S. EPA, if there is some approach to resolve the concerns expressed above and allow the City to participate in a settlement on a reasonable basis. This letter is part of our continuing settlement communications to resolve this disputed claim and is therefore inadmissible under the applicable Federal and Michigan rules of evidence. Further, nothing in this letter is intended to be, nor should it be construed to be, an admission of any liability, responsibility, facts or law by the City, and the City reserves all rights, claims and defenses in this matter as to the U.S. EPA, the State of Michigan, other PRPs and third-parties.

Please keep us fully and timely advised of any developments regarding these proceedings. As we have previously indicated, all further communications in this matter to the City of Albion should be directed to my attention or to the attention of Charles Denton of this office as legal counsel for the City.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT


George B. Davis

GBD:me

cc: James Bonamy
Charles Robison, Esq.
Mrs. Gordon Stevick (c/o Mr. Charles C. McClafferty)
Robert W. Seiler (Seiler Tank Truck Service)
Gary A. Trepod
Marc L. Greenberg (Eagle-Picher Industries)
Richard D. Geiger (Corning Incorporated)
Mark J. Airola (Cooper Industries)